

Commissioner for Patents
Page 11

Serial No.: 09/739,902

REMARKS/ARGUMENTS

Applicant respectfully requests reconsideration of this application in view of the above amendments and the following remarks.

Allowable Subject Matter

Applicant gratefully acknowledges the Examiner's indication that claims 6, 7, 12, 13, 18, 19, 22 and 23 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections – 35 U.S.C. § 101

The Office Action has rejected claims 24-33 under 35 USC 101 as being directed to non-statutory subject matter. Applicant has amended these claims so that they are now directed to computer-readable media, as suggested by the Examiner.

Claim Rejections – 35 USC § 102

The Office Action has rejected claims 1-5, 8-11, 14-17, 20, 21, 24-27, 30 and 31 under 35 U.S.C. 102(e) as being anticipated by United States Patent No. 6,721,269 (Cao *et al.*).

With respect, Applicant disagrees with the Examiner's interpretation of the following passage in Cao *et al.*:

"Upon a failure in a path selected as a primary path, a secondary path is instantaneously selected as the new primary path. Since the new route is already established, and data is already flowing the sink router along the secondary path, a path need not be computed and, consequently the time that conventional TCP/IP networks devote to computing a recovery route and establishing a new connection is substantially eliminated." [col. 4, lines 46-53]

Commissioner for Patents
Page 12

Serial No.: 09/739,902

The Examiner has interpreted this passage as meaning that data only flows along the secondary path *after* the secondary path is selected as the new primary path. With respect, Applicant submits that this interpretation is incorrect for the following four reasons:

- 1) First of all, it is respectfully submitted “already” necessarily implies that data is flowing before the new primary path is selected. Indeed, “already” is defined by *The American Heritage® Dictionary of the English Language, Fourth Edition* as meaning “By this or a specified time; before” and by *WordNet* (also available on Dictionary.com) as “prior to a specified or implied time”. Therefore, it is respectfully submitted that “already flowing” means that data is flowing on the secondary path *before* the secondary path is selected as the new primary path. This interpretation is reinforced by the following three other reasons.
- 2) Cao *et al.* further state (at col. 6, lines 10-16) that “Once both paths are established, datagrams are transmitted along both paths, with the egress router choosing one of the paths as its primary source of datagrams. Should the primary path fail, due, for example to a cut fiber along the S-A-B-E path, router E switches to a secondary route, the S-C-D-E route in this example.” Therefore, this passage confirms Applicant’s interpretation that data is flowing over both primary and secondary paths, *i.e.* data is *already* flowing over the secondary path.
- 3) Cao *et al.* further state (at col. 10, lines 10-14) that “During normal operation datagrams will flow through both the S-A-B-E and S-C-D-E ERLSPs, with the egress router, LSR E employing active protection switching to select one of the flows to pass through.” Therefore, this passage further reinforces Applicant’s interpretation. In other words, this passage makes it clear that data flows on *both paths* and therefore, when the secondary path is selected, data is already flowing on the secondary path.

Commissioner for Patents
Page 13

Serial No.: 09/739,902

4) Applicant's interpretation is further reinforced by the fact that Cao *et al.* recite in each one of independent claims 1, 10 and 19 that, at the egress router, data flow is received on a first port (from a primary path) and on a second port (from a secondary path) contemporaneously. Since data is received contemporaneously, it follows that data is flowing over both the primary and secondary paths simultaneously.

In light of these four points, it is respectfully submitted that the only reasonable interpretation of the expression "already flowing" in Cao *et al.* is that data flows over both paths and therefore data is *already* flowing on the secondary path when it is selected as the primary path. Therefore, Cao *et al.* explicitly teach away from claimed invention which recites "maintaining the back-up link in a dormant state during normal operations of the network, such that no traffic is forwarded to the back-up link during normal operations of the network".

Accordingly, for the reasons noted above, it is respectfully submitted that claims 1-5, 8-11, 14-17, 20, 21, 24-27, 30 and 31 are neither taught nor suggested by Cao *et al.* It is therefore respectfully submitted that the claims, as amended, are in a condition for immediate allowance. Applicant therefore respectfully requests the prompt issuance of a Notice of Allowance.

Respectfully submitted,

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